

In re: KARL MITCHELL, AN INDIVIDUAL; AND ALL ACTING ANIMALS, A SOLE PROPRIETORSHIP OR UNINCORPORATED ASSOCIATION.

AWA Docket No. 01-0016.

Order Granting Complainant's Petition for Reconsideration.

Filed August 8, 2001.

Petition for reconsideration – Animal welfare – Inflation adjustment – Dog defined – Cat defined – Present defined – Presumption of regularity – Civil penalty – Cease and desist order – License revocation.

The Judicial Officer granted Complainant's petition for reconsideration and increased the civil penalty assessed against Respondents in *In re Karl Mitchell*, 60 Agric. 91 (2001). The Judicial Officer concluded that, when he assessed Respondents a \$15,250 civil penalty, he erroneously failed to take into account the regulations issued under the Federal Civil Penalties Inflation Adjustment Act, as amended (28 U.S.C. § 2461 note (Supp. V 1999)) (7 C.F.R. § 3.91). Pursuant to the regulations, the Secretary of Agriculture increased the maximum civil penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the regulations and standards issued under the Animal Welfare Act by 10 percent from \$2,500 to \$2,750 (7 C.F.R. § 3.91(b)(2)(v)). Accordingly, the Judicial Officer increased the civil penalty which he assessed against Respondents by 10 percent from \$15,250 to \$16,775.

Colleen A. Carroll, for Complainant.

J. Oscar Shaw, for Respondents.

Initial decision issued by Dorothea A. Baker, Administrative Law Judge.

Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on December 6, 2000. Complainant instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations and Standards]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that, during the period April 11, 2000, through December 4, 2000, Karl Mitchell and All Acting Animals [hereinafter Respondents] willfully violated the Animal Welfare Act and the Regulations and Standards (Compl. ¶¶ 3-12).

On January 5, 2001, the Hearing Clerk served each Respondent with the

Complaint, the Rules of Practice, and a service letter dated December 7, 2000.¹ Respondents failed to answer the Complaint within 20 days after service as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). On February 13, 2001, the Hearing Clerk sent a letter to Respondents informing them that Respondents' answer to the Complaint had not been received within the time required by the Rules of Practice.²

On February 14, 2001, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Adoption of Proposed Decision and Order [hereinafter Motion for Default Decision] and a proposed Decision and Order By Reason of Admission of Facts [hereinafter Proposed Default Decision]. The Hearing Clerk served Respondents with Complainant's Motion for Default Decision and Complainant's Proposed Default Decision on March 8, 2001.³ Respondents failed to file objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision within 20 days after service as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). On April 11, 2001, Respondents filed a Motion for Leave to File Late Answer to Complaint, an Answer to Complaint and Affirmative Defenses, and a Response to Motion for Adoption of Proposed Decision and Order.

On April 25, 2001, Administrative Law Judge Dorothea A. Baker [hereinafter the ALJ] filed an Order Granting Complainant's Motion for Adoption of Proposed Decision and Order filed February 14, 2001, and a Decision and Order by Reason

¹The Hearing Clerk sent each Respondent the Complaint, the Rules of Practice, and the December 7, 2000, service letter by certified mail (See Domestic Return Receipt for Article Number 4579 5131 and Domestic Return Receipt for Article Number 4579 5155). The United States Postal Service marked each envelope containing the Complaint, the Rules of Practice, and the December 7, 2000, service letter "unclaimed" and returned the mailings to the Hearing Clerk. On January 5, 2001, in accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), the Hearing Clerk remailed the Complaint, the Rules of Practice, and the December 7, 2000, service letter to each Respondent by ordinary mail (See two memoranda dated January 5, 2001, from "TMFisher").

²See letter dated February 13, 2001, from Lawuan Waring, Acting Hearing Clerk, to Karl Mitchell and All Acting Animals.

³See Domestic Return Receipt for Article Number 4579 3922 signed by Respondent Karl Mitchell. The Hearing Clerk sent Respondent All Acting Animals Complainant's Motion for Default Decision and Complainant's Proposed Default Decision by certified mail (See Certified Mail Receipt 4579 3915). However, the record does not establish that anyone signed the Domestic Return Receipt for Article Number 4579 3915. Respondent Karl Mitchell is an owner or sole proprietor of Respondent All Acting Animals. Respondent Karl Mitchell and Respondent All Acting Animals have the same mailing address. Respondent Karl Mitchell and Respondent All Acting Animals operate as Animal Welfare Act exhibitors under the same Animal Welfare Act license (Animal Welfare Act license number 88-C-0076). Under these circumstances, I concluded that service of Complainant's Motion for Default Decision and Complainant's Proposed Default Decision on Respondent Karl Mitchell also constitutes service on Respondent All Acting Animals. *In re Karl Mitchell*, 60 Agric. Dec. 91, 93 n.3, 106 (2001).

of Admission of Facts [hereinafter Initial Decision and Order]. The ALJ: (1) concluded that Respondent Karl Mitchell is an owner or sole proprietor of Respondent All Acting Animals; (2) concluded that, at all times material to this proceeding, Respondents operated as exhibitors as defined in the Animal Welfare Act under Animal Welfare Act license number 88-C-0076; (3) concluded that Respondents violated the Animal Welfare Act and the Regulations and Standards as alleged in the Complaint; (4) directed Respondents to cease and desist from violating the Animal Welfare Act and the Regulations and Standards; (5) assessed Respondents jointly and severally a \$27,500 civil penalty; and (6) revoked Respondents' Animal Welfare Act license (Initial Decision and Order at 8-15).

On May 15, 2001, Respondents appealed to the Judicial Officer. On May 21, 2001, Complainant filed a response to Respondents' appeal petition. On May 23, 2001, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for decision.

On June 13, 2001, I issued a Decision and Order: (1) concluding that Respondents committed 45 willful violations of the Animal Welfare Act and the Regulations and Standards; (2) ordering Respondents to cease and desist from violating the Animal Welfare Act and the Regulations and Standards; (3) assessing Respondents, jointly and severally, a \$15,250 civil penalty; and (4) revoking Respondents' Animal Welfare Act license. *In re Karl Mitchell*, 60 Agric. Dec. 91, 106-14, 132-32 (2001).

On July 3, 2001, Complainant filed Complainant's Petition for Reconsideration of Decision of the Judicial Officer [hereinafter Petition for Reconsideration]. On July 23, 2001, Respondents filed Respondents Response to Complainant's Petition for Reconsideration of Decision of the Judicial Officer [hereinafter Response to Petition for Reconsideration]. On July 25, 2001, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for reconsideration of the June 13, 2001, Decision and Order.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

. . . .

CHAPTER 54—TRANSPORTATION, SALE, AND HANDLING OF CERTAIN ANIMALS

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

(1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;

(2) to assure the humane treatment of animals during transportation in commerce; and

(3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

§ 2132. Definitions

When used in this chapter—

. . . .

(h) the term “exhibitor” means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary[.]

§ 2140. Recordkeeping by dealers, exhibitors, research facilities, intermediate handlers, and carriers

Dealers and exhibitors shall make and retain for such reasonable period

of time as the Secretary may prescribe, such records with respect to the purchase, sale, transportation, identification, and previous ownership of animals as the Secretary may prescribe. . . . Such records shall be made available at all reasonable times for inspection and copying by the Secretary.

§ 2146. Administration and enforcement by Secretary

(a) Investigations and inspections

The Secretary shall make such investigations or inspections as he deems necessary to determine whether any dealer, exhibitor, intermediate handler, carrier, research facility, or operator of an auction sale subject to section 2142 of this title, has violated or is violating any provision of this chapter or any regulation or standard issued thereunder, and for such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept pursuant to section 2140 of this title of any such dealer, exhibitor, intermediate handler, carrier, research facility, or operator of an auction sale.

§ 2149. Violations by licensees

(a) Temporary license suspension; notice and hearing; revocation

If the Secretary has reason to believe that any person licensed as a dealer, exhibitor, or operator of an auction sale subject to section 2142 of this title, has violated or is violating any provision of this chapter, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person's license temporarily, but not to exceed 21 days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.

(b) Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by

the Secretary of not more than \$2,500 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation. Each violation and each day during which a violation continues shall be a separate offense. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals. The Secretary shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations.

(c) Appeal of final order by aggrieved person; limitations; exclusive jurisdiction of United States Courts of Appeals

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such an order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, and such court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

§ 2151. Rules and regulations

The Secretary is authorized to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter.

7 U.S.C. §§ 2131, 2132(h), 2140, 2146(a), 2149(a)-(c), 2151.

28 U.S.C.:

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

...

PART VI—PARTICULAR PROCEEDINGS

. . . .

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

§ 2461. Mode of recovery

. . . .

FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT

SHORT TITLE

SECTION 1. This Act may be cited as the “Federal Civil Penalties Inflation Adjustment Act of 1990”

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) PURPOSE—The purpose of this Act is to establish a mechanism that shall—

(1) allow for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

DEFINITIONS

SEC. 3. For purposes of this Act, the term—

(1) “agency” means an Executive agency as defined under section

105 of title 5, United States Code, and includes the United States Postal Service;

(2) “civil monetary penalty” means any penalty, fine, or other sanction that—

(A)(i) is for a specific monetary amount as provided by Federal law; or

(ii) has a maximum amount provided for by Federal law; and

(B) is assessed or enforced by an agency pursuant to Federal law; and

(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and

(3) “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

CIVIL MONETARY PENALTY INFLATION ADJUSTMENT REPORTS

SEC. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996, and at least once every 4 years thereafter—

(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, or the Social Security Act, by the inflation adjustment described under section 5 of this Act; and

(2) publish each such regulation in the Federal Register.

COST-OF-LIVING ADJUSTMENTS OF CIVIL MONETARY PENALTIES

SEC. 5. (a) ADJUSTMENT.—The inflation adjustment under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest—

(1) multiple of \$10 in the case of penalties less than or equal to \$100;

(2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) multiple of \$25,000 in the case of penalties greater than \$200,000.

(b) DEFINITION.—For purposes of subsection (a), the term “cost-of-living adjustment” means the percentage (if any) for each civil monetary penalty by which—

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

ANNUAL REPORT

SEC. 6. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.

LIMITATION ON INITIAL ADJUSTMENT.—The first adjustment of a civil monetary penalty . . . may not exceed 10 percent of such penalty.

28 U.S.C. § 2461 note (Supp. V 1999).

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

. . . .

PART 3—DEBT MANAGEMENT

. . . .

Subpart E—Adjusted Civil Monetary Penalties

§ 3.91 Adjusted civil monetary penalties.

(a) *In general.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b), to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act

of 1990 (Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134).

(b) *Penalties*—

....

(2) *Animal and Plant Health Inspection Service*. . . .

....

(v) Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$2,750[.]

7 C.F.R. § 3.91(a), (b)(2)(v).

9 C.F.R.:

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—ANIMAL WELFARE

PART 1—DEFINITION OF TERMS

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

....

Animal means any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. . . . With respect to a dog, the term means all dogs, including those used for hunting, security, or breeding purposes.

....

Cat means any live or dead cat (*Felis catus*) or any cat-hybrid cross.

....

Exhibitor means any person (public or private) exhibiting any animals,

which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

PART 2—REGULATIONS

SUBPART A—LICENSING

....

§ 2.4 Non-interference with APHIS officials.

A licensee or applicant for an initial license shall not interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official in the course of carrying out his or her duties.

SUBPART G—RECORDS

§ 2.75 Records: Dealers and exhibitors.

(a)(1) . . . [E]ach exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning each dog or cat purchased or otherwise acquired, owned, held, or otherwise in his or her possession or under his or her control, or which is transported, euthanized, sold, or otherwise disposed of by that . . . exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.

(i) The name and address of the person from whom a dog or cat was purchased or otherwise acquired whether or not the person is required to be licensed or registered under the Act;

(ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;

(iii) The vehicle license number and state, and the driver's license number and state of the person, if he or she is not licensed or registered under the Act;

- (iv) The name and address of the person to whom a dog or cat was sold or given and that person's license or registration number if he or she is licensed or registered under the Act;
- (v) The date a dog or cat was acquired or disposed of, including by euthanasia;
- (vi) The official USDA tag number or tattoo assigned to a dog or cat under §§ 2.50 and 2.54;
- (vii) A description of each dog or cat which shall include:
 - (A) The species and breed or type;
 - (B) The sex;
 - (C) The date of birth or approximate age; and
 - (D) The color and any distinctive markings;
- (viii) The method of transportation including the name of the initial carrier or intermediate handler or, if a privately owned vehicle is used to transport a dog or cat, the name of the owner of the privately owned vehicle;
- (ix) The date and method of disposition of a dog or cat, e.g., sale, death, euthanasia, or donation.

9 C.F.R. §§ 1.1, 2.4, .75(a)(1).

CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION

Complainant raises one issue in Complainant's Petition for Reconsideration. Complainant seeks reconsideration of the \$15,250 civil penalty that I assessed Respondents in *In re Karl Mitchell*, 60 Agric. Dec. 91 (2001), for Respondents' 45 violations of the Animal Welfare Act and the Regulations and Standards. Specifically, Complainant requests that I increase the \$15,250 civil penalty assessed against Respondents by 10 percent to \$16,775. (Pet. for Recons. at 1-2.) Respondents request that I deny Complainant's Petition for Reconsideration and that I decrease the \$15,250 civil penalty that I assessed against Respondents in *In re Karl Mitchell*, 60 Agric. Dec. 91(2001) (Response to Pet. for Recons. at 2, 6). I grant Complainant's request that I increase the civil penalty assessed against Respondents from \$15,250 to \$16,775; I reject Respondents' requests that I deny Complainant's Petition for Reconsideration and that I decrease the civil penalty assessed against Respondents.

Complainant's Petition for Reconsideration

I agree that the \$15,250 civil penalty that I assessed against Respondents in *In re Karl Mitchell*, 60 Agric. Dec. 91 ____ (June 13, 2001), should be increased by 10 percent to \$16,775. Part of the basis for my assessment of a \$15,250 civil penalty

against Respondents was my erroneous conclusion that the maximum civil penalty that the Secretary of Agriculture could assess Respondents was \$2,500 for each of Respondents' 45 violations of the Animal Welfare Act and the Regulations and Standards. Specifically, I concluded that section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) provides that the Secretary of Agriculture may assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act and the Regulations and Standards. *In re Karl Mitchell*, 60 Agric. Dec. 91, 131 n.26 (2001). Using the \$2,500 per-violation maximum, I stated, as follows:

I assess: (1) a \$2,500 civil penalty for Respondent Karl Mitchell's interference with, threats, abuse, and harassment of Animal and Plant Health Inspection Service officials in willful violation of section 2.4 of the Regulations (9 C.F.R. § 2.4); (2) a \$1,250 civil penalty for Respondents' failure on June 29, 2000, to allow Animal and Plant Health Inspection Service officials access to Respondents' facilities, animals, and records in willful violation of section 16(a) of the Animal Welfare Act (7 U.S.C. § 2146(a)) and section 2.4 of the Regulations (9 C.F.R. § 2.4); (3) a \$1,000 civil penalty for Respondents' failure on May 16, 2000, to allow Animal and Plant Health Inspection Service officials access to Respondents' records in willful violation of section 16(a) of the Animal Welfare Act (7 U.S.C. § 2146(a)) and section 2.4 of the Regulations (9 C.F.R. § 2.4); and (4) a \$10,500 civil penalty for the remaining 42 willful violations of the Animal Welfare Act and the Regulations and Standards.

In re Karl Mitchell, 60 Agric. Dec. 91, 131 n.27 (2001).

While section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) provides that the Secretary of Agriculture may assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act and the Regulations and Standards, as I stated in *In re Karl Mitchell*, 60 Agric. Dec. 91, 131 n.26 (2001), I erroneously failed to take into account the regulations issued by the Secretary of Agriculture under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note (Supp. V 1999)) [hereinafter the Federal Civil Penalties Inflation Adjustment Act] (7 C.F.R. § 3.91).

Sections 4 and 5(a) of the Federal Civil Penalties Inflation Adjustment Act provide that head of each agency shall, by regulation, adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, by increasing the maximum civil monetary penalty for each civil monetary penalty by the "cost-of-living adjustment."⁴ Effective September 2, 1997, the Secretary of

⁴The term "cost-of-living adjustment" as used in the Federal Civil Penalties Inflation Adjustment Act is defined in section 5(b) of the Federal Civil Penalties Inflation Adjustment Act.

Agriculture, by regulation, adjusted the civil monetary penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the Regulations and Standards by increasing the maximum civil penalty from \$2,500 to \$2,750 (62 Fed. Reg. 40,924-28 (July 31, 1997); 7 C.F.R. § 3.91(b)(2)(v)).

Based on this increase in the maximum civil penalty which the Secretary of Agriculture may assess under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)), I find that Respondents could be assessed a maximum civil penalty of \$123,750 for Respondents' 45 violations of the Animal Welfare Act and the Regulations and Standards, which I found in *In re Karl Mitchell*, 60 Agric. Dec. 91 (2001). After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the factors required to be considered in 7 U.S.C. § 2149(b), the remedial purposes of the Animal Welfare Act, and Complainant's sanction recommendation, all of which are discussed in *In re Karl Mitchell*, 60 Agric. Dec. 91 (2001), I conclude that a cease and desist order, the revocation of Respondents' Animal Welfare Act license, and a \$16,775 civil penalty⁵ are appropriate and necessary to ensure Respondents' compliance with the Animal Welfare Act and the Regulations and Standards in the future, to deter others from violating the Animal Welfare Act and the Regulations and Standards, and to thereby fulfill the remedial purposes of the Animal Welfare Act.

Respondents' Response to Complainant's Petition for Reconsideration

Respondents identify six bases for their requests that I deny Complainant's Petition for Reconsideration and that I decrease the \$15,250 civil penalty that I assessed against Respondents in *In re Karl Mitchell*, 60 Agric. Dec. 91 (2001). First, Respondents contend that, as a matter of law, they could not have violated section 2.75(a) of the Regulations (9 C.F.R. § 2.75(a)) as alleged in paragraphs 6(c)

⁵I assess: (1) a \$2,750 civil penalty for Respondent Karl Mitchell's interference with, threats, abuse, and harassment of Animal and Plant Health Inspection Service officials in willful violation of section 2.4 of the Regulations (9 C.F.R. § 2.4); (2) a \$1,375 civil penalty for Respondents' failure on June 29, 2000, to allow Animal and Plant Health Inspection Service officials access to Respondents' facilities, animals, and records in willful violation of section 16(a) of the Animal Welfare Act (7 U.S.C. § 2146(a)) and section 2.4 of the Regulations (9 C.F.R. § 2.4); (3) a \$1,100 civil penalty for Respondents' failure on May 16, 2000, to allow Animal and Plant Health Inspection Service officials access to Respondents' records in willful violation of section 16(a) of the Animal Welfare Act (7 U.S.C. § 2146(a)) and section 2.4 of the Regulations (9 C.F.R. § 2.4); and (4) an \$11,550 civil penalty for the remaining 42 willful violations of the Animal Welfare Act and the Regulations and Standards.

and 6(d) of the Complaint (Response to Pet. for Recons. at 2).⁶

Complainant alleges in paragraphs 6(c) and 6(d) of the Complaint that on July 24, 2000, Respondents' records of acquisition of animals from Betty Thomas did not contain Ms. Thomas' address and did not contain Ms. Thomas' United States Department of Agriculture license number in willful violation of section 2.75(a) of the Regulations (9 C.F.R. § 2.75(a)). Respondents failed to file an answer within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing (7 C.F.R. § 1.139). Thus, Respondents are deemed to have admitted that their records of acquisition of animals from Betty Thomas did not contain Ms. Thomas' address and did not contain Ms. Thomas' United States Department of Agriculture license number in willful violation of section 2.75(a) of the Regulations (9 C.F.R. § 2.75(a)). Respondents correctly state that section 2.75(a) of the Regulations (9 C.F.R. § 2.75(a)) applies only to dogs and cats. Respondents assert that, as a matter of law, their admission that their records pertaining to the acquisition of "animals" did not contain required information cannot be held to be an admission that they violated a regulation that only applies to records concerning dogs and cats. (Response to Pet. for Recons. at 2.)

I disagree with Respondents' contention that their admission that their records pertaining to the acquisition of animals did not contain required information, cannot, as a matter of law, constitute an admission that they violated 9 C.F.R. § 2.75(a). Dogs and cats are animals.⁷ Thus, Respondents' admission that their records pertaining to the acquisition of animals did not contain required information, can, as a matter of law, constitute an admission that they violated the recordkeeping requirements relating to dogs and cats in 9 C.F.R. § 2.75(a). Therefore, I reject Respondents' contention that, as a matter of law, they cannot be deemed to have admitted that they violated section 2.75(a) of the Regulations (9 C.F.R. § 2.75(a)) as alleged in paragraphs 6(c) and 6(d) of the Complaint.

Second, Respondents contend that, as a matter of law, they could not have violated section 2.75(a) of the Regulations (9 C.F.R. § 2.75(a)) as alleged in paragraph 6(a) of the Complaint (Response to Pet. for Recons. at 2-3).

⁶In the June 13, 2001, Decision and Order, I found that, as a matter of law, Respondents could not have committed the violations alleged in paragraphs 6(b), 6(d), and 8(i) of the Complaint. *In re Karl Mitchell*, 60 Agric. Dec. 91, 130 n.25 (2001). Respondents correctly point out that my reference to paragraph 6(d) of the Complaint is error and that I should have referenced paragraph 6(e) of the Complaint in *In re Karl Mitchell*, 60 Agric. Dec. 91, 130 n.25 (June 13, 2001) (Response to Pet. for Recons. at 2 n.1).

⁷See the definition of the term "animal" in section 1.1 of the Regulations (9 C.F.R. § 1.1).

Complainant alleges in paragraph 6(a) of the Complaint that on July 24, 2000, Respondents' records of the purchase of two cats did not contain the purchaser's address in willful violation of section 2.75(a) of the Regulations (9 C.F.R. § 2.75(a)). Respondents correctly state that section 2.75(a) of the Regulations (9 C.F.R. § 2.75(a)) applies only to dogs and cats. Moreover, Respondents correctly state that the only type of cat covered by section 2.75(a) of the Regulations (9 C.F.R. § 2.75(a)) is *Felis catus* (the domestic house cat).⁸ Respondents now contend that they "did not have any domestic cats or dogs, but only exotic animals, lions, tigers and liger 'cats.'" (Response to Pet. for Recons. at 3.) Respondents failed to file an answer within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing (7 C.F.R. § 1.139). Respondents' denial that they had domestic house cats, and, assertion that they, therefore, could not have violated 9 C.F.R. § 2.75(a) as alleged in paragraph 6(a) of the Complaint are too late to be considered.

Third, Respondents contend that I erroneously inferred that the word "present" in paragraph 3 of the Complaint refers to the date Complainant issued the Complaint, December 4, 2000. Respondents assert that there are no facts to substantiate how Complainant was aware of any violation after July 24, 2000. Therefore, there is no evidence to support a conclusion that the word "present" in paragraph 3 of the Complaint refers to December 4, 2000 (Response to Pet. for Recons. at 4-5).

Complainant alleges in paragraph 3 of the Complaint that "[o]n several occasions between April 11, 2000, and the present, [R]espondent Karl Mitchell has interfered with, threatened, abused and harassed [Animal and Plant Health Inspection Service] officials in the performance of their duties, in willful violation of section 2.4 of the Regulations (9 C.F.R. § 2.4)." I inferred that the word "present" as used in paragraph 3 of the Complaint refers to the date Complainant issued the Complaint, December 4, 2000. *In re Karl Mitchell*, 60 Agric. Dec. 91, 128 n.22 (2001).

I agree with Respondents that there is no "evidence" to support a conclusion that the word "present" in paragraph 3 of the Complaint refers to December 4, 2000. Moreover, I find Complainant's use of the word "present" in paragraph 3 of the

⁸ See the definition of the term "cat" in section 1.1 of the Regulations (9 C.F.R. § 1.1). See also *State v. Belk*, 150 S.E.2d 481, 484-85 (N.C. 1996); *P.B. v. C.C.*, 647 N.Y.S.2d 732, 735 (N.Y. App. Div. 1996) (Kupferman, J., dissenting); *In re Karl Mitchell*, 60 Agric. Dec. 91, 130 n.25 (2001).

Complaint troubling because of its inexactitude.⁹ However, generally, when the drafter of a document uses the word “present” in the context in which it is used in paragraph 3 of the Complaint, the drafter is referring to the time the document is issued. Based on the limited record before me, I find no basis on which to infer that Complainant intended the word “present” in paragraph 3 of the Complaint to refer to July 24, 2000, as Respondents suggest, or to refer to any date other than the date Complainant issued the Complaint. Therefore, I reject Respondents’ contention that I erroneously inferred that the word “present” in paragraph 3 of the Complaint refers to the date Complainant issued the Complaint.

Moreover, even if I were to infer that the word “present” in paragraph 3 of the Complaint refers to July 24, 2000, as Respondents suggest, that inference would not cause me to decrease the amount of the civil penalty which I assess against Respondents. Having failed to file a timely answer, Respondents are deemed to have admitted that on several occasions Respondent Karl Mitchell interfered with, threatened, abused, and harassed Animal and Plant Health Inspection Service officials in the performance of their duties, in willful violation of section 2.4 of the Regulations (9 C.F.R. § 2.4). Respondents’ multiple violations of 9 C.F.R. § 2.4 fully warrant the civil penalty which I assess against Respondents, whether the violations occurred between April 11, 2000, and July 24, 2000, or between April 11, 2000, and December 4, 2000.

Fourth, Respondents contend that on May 16, 2000, “Respondent Karl Mitchell was not present on the premises”; therefore, Respondents could not have violated section 16(a) of the Animal Welfare Act (7 U.S.C. § 2146(a)) and section 2.4 of the Regulations (9 C.F.R. § 2.4) as alleged in paragraph 5 of the Complaint (Response to Pet. for Recons. at 4).

Complainant alleges in paragraph 5 of the Complaint that on May 16, 2000, Respondents failed to allow Animal and Plant Health Inspection Service officials to examine the records that Respondents are required to maintain under the Animal Welfare Act and the Regulations, in willful violation of section 16(a) of the Animal Welfare Act (7 U.S.C. § 2146(a)) and section 2.4 of the Regulations (9 C.F.R. § 2.4). Respondents failed to file an answer within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing (7 C.F.R. § 1.139). Thus, Respondents are deemed to have admitted that on May 16, 2000, Respondents failed to allow Animal and Plant

⁹Notwithstanding Complainant’s troubling use of the word “present” in paragraph 3 of the Complaint, as discussed in *In re Karl Mitchell*, 60 Agric. Dec. 91, 114-16 (2001), I find the Complaint provides Respondents with adequate notice of the facts and provisions of law that constitute the basis for the proceeding and the issues in controversy.

Health Inspection Service officials to examine the records that Respondents are required to maintain under the Animal Welfare Act and the Regulations, in willful violation of section 16(a) of the Animal Welfare Act (7 U.S.C. § 2146(a)) and section 2.4 of the Regulations (9 C.F.R. § 2.4). Respondents' assertion that Respondent Karl Mitchell was not on the premises on May 16, 2000, is too late to be considered.

Fifth, Respondents contend that, based on the limited record, I cannot assess the gravity of Respondents' violations, Respondents' good faith or lack of good faith, or the willfulness of Respondents' violations (Response to Pet. for Recons. at 5-6).

As discussed in the June 13, 2001, Decision and Order, the gravity of Respondents' violations and Respondents' lack of good faith are revealed by the number and type of Respondents' violations. *In re Karl Mitchell*, 60 Agric. Dec. 91, 128-32 (2001). Moreover, Complainant alleges that each of Respondents' violations was willful (Compl. ¶¶ 3-12). Respondents failed to file an answer within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Therefore, Respondents are deemed to have admitted that each of their violations was a willful violation. Respondents' denial that their violations were willful is too late to be considered.

Sixth, Respondents assert that the nature of the Animal and Plant Health Inspection Service inspections would cause one to question the motives of the Animal and Plant Health Inspection Service inspectors (Response to Pet. for Recons. at 5-6).

The record contains no evidence regarding the motivation of the Animal and Plant Health Inspection Service inspectors who inspected or attempted to inspect Respondents' facilities, animals, and records. In the absence of clear evidence to the contrary, public officers are presumed to have properly discharged their official duties.¹⁰ Therefore, I presume that these Animal and Plant Health

¹⁰ See *United States v. Mezzanatto*, 513 U.S. 196, 210 (1995) (stating the fact that there is potential for abuse of prosecutorial bargaining power is an insufficient basis for foreclosing plea negotiation; the great majority of prosecutors are faithful to their duties and absent clear evidence to the contrary, courts presume that public officers properly discharge their duties); *INS v. Miranda*, 459 U.S. 14, 18 (1982) (per curiam) (stating although the length of time to process the application is long, absent evidence to the contrary, the court cannot find that the delay was unwarranted); *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926) (stating a presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties); *Sunday Lake Iron Co. v. Wakefield TP*, 247 U.S. 350, 353 (1918) (stating the good faith of taxing officers and the validity of their actions are presumed; when assailed, the burden of proof is on the complaining party); *Chaney v. United States*, 406 F.2d 809, 813 (5th Cir.) (stating the presumption that the local selective service board considered the appellant's request for reopening in accordance with 32 C.F.R. § 1625.2 is a strong presumption that is only

overcome by clear and convincing evidence), *cert. denied*, 396 U.S. 867 (1969); *Lawson Milk Co. v. Freeman*, 358 F.2d 647, 649 (6th Cir. 1966) (stating without a showing that the action of the Secretary of Agriculture was arbitrary, his action is presumed to be valid); *Donaldson v. United States*, 264 F.2d 804, 807 (6th Cir. 1959) (stating the presumption of regularity supports official acts of public officers and in the absence of clear evidence to the contrary, courts presume they have properly discharged their duties); *Panno v. United States*, 203 F.2d 504, 509 (9th Cir. 1953) (stating a presumption of regularity attaches to official acts of the Secretary of Agriculture in the exercise of his congressionally delegated duties); *Reines v. Woods*, 192 F.2d 83, 85 (Emer. Ct. App. 1951) (stating the presumption of regularity which attaches to official acts can be overcome only by clear evidence to the contrary); *NLRB v. Bibb Mfg. Co.*, 188 F.2d 825, 827 (5th Cir. 1951) (holding duly appointed police officers are presumed to discharge their duties lawfully and that presumption may only be overcome by clear and convincing evidence); *Woods v. Tate*, 171 F.2d 511, 513 (5th Cir. 1948) (concluding an order of the Acting Rent Director, Office of Price Administration, is presumably valid and genuine in the absence of proof or testimony to the contrary); *Pasadena Research Laboratories, Inc. v. United States*, 169 F.2d 375, 381-82 (9th Cir.) (stating the presumption of regularity applies to methods used by government chemists and analysts and to the care and absence of tampering on the part of postal employees), *cert. denied*, 335 U.S. 853 (1948); *Laughlin v. Cummings*, 105 F.2d 71, 73 (D.C. Cir. 1939) (stating there is a strong presumption that public officers exercise their duties in accordance with law); *In re Greenville Packing Co.*, 59 Agric. Dec. 194, 220-22 (2000) (stating that, in the absence of evidence to the contrary, Food Safety and Inspection Service inspectors are presumed to have properly issued process deficiency records), *appeal docketed*, No. 00-CV-1054 (N.D.N.Y. July 5, 2000); *In re Dwight L. Lane*, 59 Agric. Dec. 148, 177-78 (2000) (stating that a United States Department of Agriculture hearing officer is presumed to have adequately reviewed the record and no inference is drawn from an erroneous decision that the hearing officer failed to properly discharge his official duty to review the record), *aff'd*, A2-00-84 (D.N.D. July 18, 2001); *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 280-82 (1998) (stating that, in the absence of clear evidence to the contrary, United States Department of Agriculture inspectors and investigators are presumed to have properly discharged their duty to document violations of the Animal Welfare Act); *In re Auvil Fruit Co.*, 56 Agric. Dec. 1045, 1079 (1997) (stating without a showing that the official acts of the Secretary of Agriculture are arbitrary, his actions are presumed to be valid); *In re Kim Bennett*, 55 Agric. Dec. 176, 210-11 (1996) (stating that instead of presuming United States Department of Agriculture attorneys and investigators warped the viewpoint of United States Department of Agriculture veterinary medical officers, the court should have presumed that training of United States Department of Agriculture veterinary medical officers was proper because there is a presumption of regularity with respect to official acts of public officers); *In re C.I. Ferrie*, 54 Agric. Dec. 1033, 1053 (1995) (stating use of United States Department of Agriculture employees in connection with a referendum on the continuance of the Dairy Promotion and Research Order does not taint the referendum process, even if petitioners show some United States Department of Agriculture employees would lose their jobs upon defeat of the Dairy Promotion and Research Order, because a presumption of regularity exists with respect to official acts of public officers); *In re Mil-Key Farm, Inc.*, 54 Agric. Dec. 26, 55 (1995) (stating without a showing that the official acts of the Secretary of Agriculture are arbitrary, his actions are presumed to be valid); *In re Hershey Chocolate U.S.A.*, 53 Agric. Dec. 17, 55 (1994) (stating without a showing that the official acts of the Secretary are arbitrary, his actions are presumed to be valid), *aff'd*, No. 1:CV-94-945 (M.D. Pa. Feb. 3, 1995); *In re King Meat Co.*, 40 Agric. Dec. 1468, 1494 (1981) (stating there is a presumption of regularity with respect to the issuance of instructions as to grading methods and procedures by the Chief of the Meat Grading Branch, Food Safety and Quality Service, United States Department of Agriculture), *aff'd*, No. CV 81-6485 (C.D. Cal. Oct. 20, 1982), *remanded*, No. CV 81-6485 (C.D. Cal. Mar. 25, 1983) (to consider newly discovered evidence), *order on remand*, 42 Agric. Dec. 726 (1983), *aff'd*, No. CV 81-6485 (C.D. Cal. Aug. 11, 1983) (original order of Oct. 20, 1982, reinstated *nunc pro tunc*), *aff'd*, 742 F.2d 1462 (9th Cir. 1984) (unpublished) (not to be cited as precedent under 9th Circuit Rule 21); *In re Gold Bell-I&S*

Inspection Service inspectors were only motivated by the desire to properly discharge their official duties, and I reject Respondents' suggestion that these Animal and Plant Health Inspection Service inspectors had other motivations.

For the foregoing reasons, Complainant's Petition for Reconsideration is granted.

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition for reconsideration.¹¹ Complainant's Petition for Reconsideration was timely filed and automatically stayed the June 13, 2001, Decision and Order. Since Complainant's Petition for Reconsideration is granted, the Order in the Decision and Order issued June 13, 2001, is not reinstated.

For the foregoing reasons and the reasons in *In re Karl Mitchell*, 60 Agric. Dec. 91 (2001), the following Order should be issued.

Jersey Farms, Inc., 37 Agric. Dec. 1336, 1361 (1978) (rejecting respondent's theory that United States Department of Agriculture shell egg graders switched cases of eggs to discredit respondent, in view of the presumption of regularity supporting acts of public officials), *aff'd*, No. 78-3134 (D.N.J. May 25, 1979), *aff'd mem.*, 614 F.2d 770 (3d Cir. 1980).

¹¹ *In re Rafael Dominguez*, 60 Agric. Dec. 210, 217 (2001) (Order Denying Pet. for Recons.); *In re William J. Reinhart*, 60 Agric. Dec. 241, 263 (2001) (Order Denying William J. Reinhart's Pet. for Recons.); *In re Reginald Dwight Parr*, 59 Agric. Dec. 629, 647 (2000) (Order Denying Respondent's Pet. for Recons.); *In re Mangos Plus, Inc.*, 59 Agric. Dec. 883, 890 (2000) (Order Denying Pet. for Recons.); *In re Kirby Produce Co.*, 58 Agric. Dec. 1032, 1040 (1999) (Order Denying Pet. for Recons.); *In re James E. Stephens*, 58 Agric. Dec. 201, 209 (1999) (Order Denying Pet. for Recons.); *In re Michael Norinsberg*, 58 Agric. Dec. 619, 625 (1999) (Order Denying Pet. for Recons. on Remand); *In re Sweck's, Inc.*, 58 Agric. Dec. 222, 227 (1999) (Order Denying Pet. for Recons.); *In re Produce Distributors, Inc.*, 58 Agric. Dec. 535, 540-41 (1999) (Order Denying Pet. for Recons. as to Irene T. Russo, d/b/a Jay Brokers); *In re Judie Hansen*, 58 Agric. Dec. 369, 387 (1999) (Order Denying Pet. for Recons.); *In re Daniel E. Murray*, 58 Agric. Dec. 77, 83 (1999) (Order Denying Pet. for Recons.); *In re David M. Zimmerman*, 58 Agric. Dec. 336, 338-39 (1999) (Order Denying Pet. for Recons.); *In re C. C. Baird*, 57 Agric. Dec. 1284, 1299 (1998) (Order Denying in Part and Granting in Part Pet. for Recons.); *In re JSG Trading Corp.*, 57 Agric. Dec. 710, 729 (1998) (Order Denying Pet. for Recons. as to JSG Trading Corp.); *In re Peter A. Lang*, 57 Agric. Dec. 91, 110 (1998) (Order Denying Pet. for Recons.); *In re Jerry Goetz*, 57 Agric. Dec. 426, 444 (1998) (Order Denying Respondent's Pet. for Recons. and Denying in Part and Granting in Part Complainant's Pet. for Recons.); *In re Allred's Produce*, 57 Agric. Dec. 799, 801-02 (1998) (Order Denying Pet. for Recons.); *In re Michael Norinsberg*, 57 Agric. Dec. 791, 797 (1998) (Order Denying Pet. for Recons.); *In re Tolar Farms*, 57 Agric. Dec. 775, 789 (1998) (Order Denying Pet. for Recons.); *In re Samuel Zimmerman*, 56 Agric. Dec. 1458, 1467 (1997) (Order Denying Pet. for Recons.); *In re Kanowitz Fruit & Produce Co.*, 56 Agric. Dec. 942, 957 (1997) (Order Denying Pet. for Recons.); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 269, 275 (1997) (Order Denying Pet. for Recons.); *In re City of Orange*, 56 Agric. Dec. 370, 371 (1997) (Order Granting Request to Withdraw Pet. for Recons.); *In re Five Star Food Distributors, Inc.*, 56 Agric. Dec. 898, 901 (1997) (Order Denying Pet. for Recons.); *In re Havana Potatoes of New York Corp.*, 56 Agric. Dec. 1017, 1028 (1997) (Order Denying Pet. for Recons.); *In re Saulsbury Enterprises*, 56 Agric. Dec. 82, 101 (1997) (Order Denying Pet. for Recons.); *In re Andershock Fruitland, Inc.*, 55 Agric. Dec. 1234 (1996) (Order Denying Pet. for Recons.).

ORDER

1. Respondents, their agents, employees, successors, and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards. The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondents.

2. Respondents are jointly and severally assessed a \$16,775 civil penalty. The civil penalty shall be paid by certified check or money order, made payable to the Treasurer of the United States. Respondents shall send the certified check or money order to:

Colleen A. Carroll
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

The certified check or money order shall be sent to, and received by, Ms. Carroll within 60 days after service of this Order on Respondents. Respondents shall state on the certified check or money order that payment is in reference to AWA Docket No. 01-0016.

3. Respondents' Animal Welfare Act license (Animal Welfare Act license number 88-C-0076) is revoked. The Animal Welfare Act license revocation provisions of this Order shall become effective on the 60th day after service of this Order on Respondents.

4. Respondents have the right to seek judicial review of this Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341, 2343-2350. Such court has exclusive jurisdiction to enjoin, to set aside, to suspend (in whole or in part), or to determine the validity of this Order. Respondents must seek judicial review within 60 days after entry of this Order. 7 U.S.C. § 2149(c). The date of entry of this Order is August 8, 2001.
